IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

RAMSWAROOP & ANR. VS. STATE OF RAJSATHAN
(S.B.Criminal Appeal No.238/88)

Date of Judgment:- 20th November, 2006.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr. B.N.Kalla, Advocate for the appellants.
Mr.Rameshwar Dave, Public Prosecutor for the State.

BY THE COURT:-

REPORTABLE

This criminal appeal is directed against the judgment dated 23.5.1988 passed by the Additional Sessions Judge No.2, Hanumangarh whereby he convicted the appellant Ramswaroop and Chandiram for offence u/s 325 read with 34 IPC and sentenced each of them to undergo rigorous imprisonment for two years and a fine of Rs.500/- and in default of payment of fine, to further under rigorous imprisonment of three months.

The factual matrix of the case is that a first information report was filed with the Police Station, Suratgarh on the basis of Parcha Bayan of one Prithvi Chand at 10.15 p.m. on 23.7.1989 in which he stated that he and his brother Lal Singh was alloted two murrabas of land. They had given possession of the said land to one Bhupram for the purpose of cultivation on the condition that he would continue to pay remaining instalments of the price of the land . It was with their permission that Bhupram came in possession of the land as their licensee. While they have taken back the possession of murraba owned by Lal Singh, said Bhupram still continued in possession of another murraba owned by Prithvi Chand. He started having a grudge against the complainant on this account. On the fateful day of incident, there was complainant's turn of receiving the water from the distributoryof river for cultivation. Around 6.30 p.m. he alongwith his brother Lal Singh and Harnam Singh was repairing the `Nala' in the evening. On that day, Lakhpat , Chandiram, Ramswaroop and Bhupram all armed with lathis suddenly arrived and started beating Lal Singh. When

complainant Prithvi Chand went to his rescue, they inflicted lathi blow on his head too. All four of them ran away from the scene of incident considering Lal Singh to be dead. The complainant took Lal Singh to the hospital and thereafter came back to register the case.

While prosecution examined as many as six witnesses and exhibited various documents including M.L.Rs. and X-ray plates, the statement of the accused were recorded in their defence although they did not produce any other witness. The learned trial Court upon heariang arguments of the parties, convicted the aforementioned two accused for offence u/s 325/34 IPC and sentenced each of them as indicated above.

I have heard Mr.B.N.Kalla, learned counsel for the petitioners and Mr.Rameshwar Dave, learned Public Prosecutor for the State and perused the record.

Mr.B.N.Kalla, learned counsel for the petitioner has

argued that there was no evidence on record to connect the accused with the crime and they have been falsely implicated in the matter. The prosecution has produced six witnesses but no independent witnesses have been produced by them to prove the charge. The statements of the prosecution witnesses are full of contradictions. P.W. 2 Harnam Singh has deposed that accused Ramswaroop or any other person did not give any beating in his presence. The complainant party was aggressor and the incident has taken place on the agricultural field which was in possession of the accused. The accused petitioners acted in exercise of their right of private defence of person and property. This was all the more so because the complainant party by taking law into their hands wanted to forcibly take possession of the land. The prosecution although asserted that injured Prithvi Chand has suffered one head injury but the X-ray plate has not been proved nor has it been proved as to who inflicted the said injury. There was only an omnibus allegation against all the accused. No soil containing blood was recovered from the earth and therefore also alleged incident has become doubtful. While in the F.I.R. all four accused have

been named but the police has filed challan against only two of them. Out of six witnesses only two witnesses namely P.W. 1 Kana Ram and P.W. 2 Harnam Singh can be said to be unrelated to the complainant party but both of them have not supported the prosecution case. The medical evidence also does not prove the offence u/s 325 IPC. It has therefore been prayed that the impugned order passed by the trial Court be set aside.

On the other hand, Mr.Rameshwar Dave, learned Public Prosecutor argued that the accused appellants had mercilessly beaten the injured. There was over whelming evidence to prove the charge against the accused beyond reasonable doubt. He has referred to the statement of P.W. 3 Prithvi Chand in which he has specifically named the accused appellants and has stated that both of them together with Bhupram and one other person gave beating to injured Lal Singh by use of lathi and caused fracture on arm and leg. He has also stated that the accused also inflicted a lathi blow on his head. He has taken me through various statements of the

prosecution witnesses and exhibits.

I have given my thoughtful consideration to the arguments of the learned counsel for the petitioners and the learned Public Prosecutor.

Careful examination of statement of P.W. 3 Prithvi Chand reveals that they he stated that they had given the land to the accused only for the purpose of cultivation, part of which they took back. There was dispute with regard to the turn of water for cultivation and it was owing to that the accused persons attacked them. P.W.3 Prithvi Chand has specifically assigned number of injuries caused to him and Lal Singh to the accused appellants. He has also referred to the statement of P.W. 5 Lal Singh who also provided corroboration to the statement of P.W. 3 Prithvi Chand. Learned Public Prosecutor has referred to Ex.P/4 the injury report of Lal Singh and Ex.P/5 which is X-ray report. He has also referred to the injury report of Prithvi Chand(Ex.P/6). He argued that the accused appellants have been named in the F.I.R.. Even if PW. 1 Kana

Ram and P.W. 2 Harnam Singh have turned hostile, evidence of the remaining witnesses clearly prove the charge of offence u/s 325/34 IPC. It has therefore been prayed that the impugned order be maintained.

P.W. 5 Lal Singh, another injured has also provided corroboration to the statement of P.W. 3 Prithvi Chand in all material particulars. He has categorically stated that the accused-appellants had a dispute with them in regard to turn of the watering. The accused appellants alongwith one more person caused lathi blow to him. They caused two fractures on his right hand and leg. Ram Swaroop was the first person who caused lathi blow to him and thereafter two other persons hit him at the back from lathi. Another accused also caused injuries to him. The accused wanted to grab their land and the complainant did not want to part with that land and therefore they have been beaten. P.W. 4 Dr.S.B.Jhanwar is the Medical Officer who had examined injuries of both Prithvi Chand and Lal Singh. He has proved the injury reports of Prithvi Chand and Lal Singh. Lal Singh received as many as seven injuries

out of which three resulted in fracture of his radius bone of the left arm, humerus bone of the right arm and tibia bone of his right leg, apart from fracture of the upper part of the fibula bone. Duration of the injuries was within 24 hours. He has also proved the injury report of injured Prithvi Chand and stated that according to his X-ray report there was a fracture of his fatal zygomtren bone.

Even though, it is a fact that P.W. 1 Kana Ram and P.W. 2 Harnam Singh have not supported the prosecution case but the fact also remains that accused appellants have not only been specifically named in the F.I.R. but a definite role has been assigned to them. The injured in their statement have categorically named them. The argument raised by the learned counsel for the appellants that they were acting in exercise of their right to defence of person and property has not been substantiated in any manner. Evidence that has come on record clearly indicate that the members of the complainant party were merely repairing the `Naali ' of the water distributory to take water for the purpose of cultivation on their

turn. There was no effort on their part, much less an overt act, to take forcible possession of the part of the land which was occupied by the accused appellants. Assertion of the accused appellants that members of the complainant party wanted to take forcible possession of their land cannot be accepted on their mere ipse dixit. This assertion by itself hardly proved their case for exercise of their right of private defence. There is no evidence that any of the accused suffered a single injury. While Lal Singh has suffered as many as 7 injuries, out of which three are grievous in nature causing fractures on different parts of the body, complainant Prithvi Chand received fracture. The accused attacked the injured with a common intention of voluntarily causing grievous hurt to the injured. In my considered view, the prosecution had duly discharged the burden of proof of the guilt the accused beyond reasonable doubt and they have rightly been convicted for offence u/s 325/34 IPC.

Coming now to the question of sentence, it may be noted that the incident in question had taken place as far as

back on 23rd July, 1982 and the period of 24 years have gone by since then. It would be evident from the record that when the statements of accused Ramswaroop and Chandi Ram were recorded by the trial Court in the year 1988 they were recpectively 30 and 26 years of age and obviously when the incident had taken place in the year 1982, their age was still less respectively as 24 years and 20 years. Now when 24 more years have gone by since then, the accused Ramswaroop must be now almost 48 years, the accused Chandi Ram should be around 44 yeas. Both of them were enlarged on bail not only during trial but also during pendency of the present appeal. There is no report to the effect that either of them at any stage misused the liberty granted to them. There is also no report to the effect that anyone of them was a previous convict.

In the circumstances of the case, while maintaining the conviction of the accused appellants, I deem it appropriate to give them an opportunity to prove themselves as good citizen in keeping with the reformatory theory of penalogy. Ends of justice would therefore be adequately met if the

appellants are enlarged on probation in stead of being required to serve substantial sentence.

I therefore direct that each of the accused appellants shall execute a bond alongwith one surety in the sum of Rs.10,000/- for maintaining peace and good behaviour for a period of one year before the trial Court within one month from the date of receipt of the certified copy of the judgment. The sentence of fine imposed by the trial Court to each of the accused appellants however shall stand which shall now be deposited in the trial Court and shall be converted into costs of proceedings u/s 5(1)(b) of the Probation of Offenders Act. In addition thereto, I also deem it appropriate to direct each of the appellants to deposit a further amount of Rs.2500/- with the trial Court and the amount of Rs.5000/- so deposited shall be paid by the learned trial Court to the injured Lal Singh. In default of payment of the aforesaid two amounts, both the appellants shall be required to suffer entire substantive sentence as originally awarded by the learned trial Court.

While maintaining the conviction of the accused appellants with the above modification in the order of sentence, the appeal stands partly allowed.

(MOHAMMAD RAFIQ), J.